



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1998

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-1722

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116968.

The City of Houston (the "city") received a request for the most recent response submitted by IHDS of Texas, Inc. ("IHDS") for the request for proposals for the administration of the city's self-insured workers' compensation program. The requestor also seeks a listing of all payments made to any company under the city's self-insured workers' compensation program. You indicate that you will release the payments made to companies under the workers' compensation program. You claim, however, that the most recent proposal submitted by IHDS is excepted from required public disclosure by sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular

competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2. As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. *See* Open Records Decision No. 592 (1991) at 8.

You explain that the city has requested proposals for workers' compensation third party administration claims handling and related services. You state that

[a]t this time, a final determination of the best proposal has not been made as the selection process and evaluation are still in progress. The City will request City Council action with regard to the best response to proposal; until this date, no contract has been awarded or approved by City Council.

We find that you have shown the applicability of section 552.104. The city may withhold the requested proposal at this time.

Because we make a determination under section 552.104, we do not consider your claims under section 552.110 for this ruling. If you receive a subsequent request for the information, you should re-assert your arguments against disclosure at that time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 116968

Enclosures: Submitted documents

cc: Mr. Robert Walsh
Summit Group
P.O. Box 922020
Houston, Texas 77292
(w/o enclosures)